

REMARKS

The Office, on page 4 of the Notice to Comply, stated that “Ad5 nucleotides 459-3510 are set forth in the specification” and that “said nucleotides were not represented by a sequence identifier.” Although applicants disagree with the underlying contention of the Notice to Comply (see e.g. *In re Gay*, 309 F.2d 769, 135 USPQ 311 (CCPA 1962) (a patent specification is not intended nor required to be a production specification), and do not believe a sequence listing is necessary, applicants are submitting the sequence listing to expedite prosecution of the application. Applicants believe that when the location of the sequence is readily obtainable by a person of ordinary skill in the art, using the guidance of the specification, it should not be necessary to provide further description or a specific sequence listing.

One of ordinary skill in the art would know that the Adenovirus serotype-5 (Ad5), is readily available by a simple search in a number of nucleotide databases. Particularly, a search of NCBI’s PubMed website for the Ad5 nucleotide yields GenBank accession no. X02996, published in 1980 (*Gene* 1980 Jun;10(1):27-38). The nucleotide sequence on the database includes the disclosed sequence (Ad5 nucleotides 459-3510), and indeed was the source of the disclosed nucleotide numbers.

Moreover, the United States Court of Appeals for the Federal Circuit, in *Enzo Biochemical v. Gen-Probe Inc.*, 323 F.3d 956, 965 (Fed. Cir. 2002) held, “that reference in the specification to deposits of nucleotide sequences describe those sequences sufficiently to the public for purposes of meeting the written description requirement.” In the instant specification, in the “Description of the Invention” section, refers to the accession number where a deposit of the PER.C6 cells that contain the Ad5 E1A and E1B can be found: No. 96022940 at the European Collection of Animal Cell Cultures at the Centre for Applied Microbiology and Research (See specification, page 3). The instant specification also discloses U.S. Patent 5,994,128 which describes in detail the construction of the PER.C6 cell line and incorporated plasmid pIG.E1A.E1B.X containing both the E1A and E1B coding sequences under the direction of the PGK promoter. The ‘128 patent also discloses the specific PCR primers for the E1A (SEQ ID NOS: 1 and 2) and E1B (SEQ ID NOS: 3 and 5) coding regions. As such, the reference in the

specification is sufficient to allow a person of ordinary skill in the art to obtain any additional information or a specific nucleotide sequence and the submission of a sequence listing is not new matter.

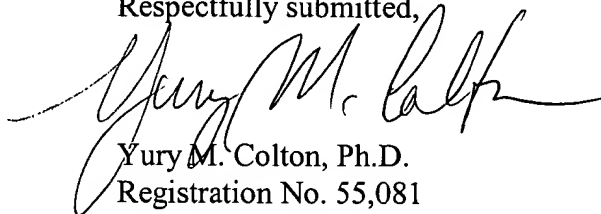
Nevertheless, merely to expedite prosecution of the present application, the applicants submit herewith a paper copy (Appendix A) and a computer readable copy of a sequence listing in compliance with 37 C.F.R. 1.821-1.825. The sequence listing reflects the E1A and E1B coding sequences found in the PER.C6 cells described in U.S. Patent 5,994,128, and deposited under No. 96022940 at the European Collection of Animal Cell Cultures at the Centre for Applied Microbiology and Research.

In addition, the cited passage of the specification has been amended to reference the sequence listing provided herewith. No new matter has been added by the sequence listing.

CONCLUSION

If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,



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YMC/ymc

Enclosures: Appendix A; paper copy of the Sequence Listing
Computer readable copy of the Sequence Listing
Statement Under 37 C.F.R. §§ 1.821 through 1.825
Copy of the Notice to Comply